

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1349 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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G S R T C

Versus

DILIPKUMAR D GOSWAMI

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Appearance:

MR HARDIK C RAWAL for Petitioner

MR RE VARIAVA for Respondent No. 1

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/09/98

ORAL JUDGEMENT

By means of this petition, the petitioner Corporation has sought for quashing the Award dated 16.8.90 passed whereby the Labaour Court, Rajkot in Reference (LCR) NO. 852 of 1984, by which the Labour Court, Rajkot has directed the petitioner Corporation to reinstate the respondent workman with full back wages.

2. The respondent workman was working as Junior Assistant in the petitioner Corporation. During the course of his duties as Junior Assistant he was entrusted with an amount of Rs. 932.78 ps. It was unpaid excess amount of Khambhalia depot and the said amount was given to the respondent for crediting the same in Rajkot head office of the petitioner Corporation under challan no. 47325 dated 7.6.82. The respondent did not deposit the aforesaid amount in the Divisional Office at Rajkot on 8.6.82, but he got the amount credited in the said office at Rajkot on 20.6.82 and he unauthorisedly retained the amount of Rs. 932.78 ps. of the Corporation for 21 days. He was therefore, charged for committing temporary misappropriation of the said amount for that purpose. His explanation was called for by letter dated 8.7.82. It was not replied by the respondent until 24.7.82. A regular departmental inquiry was held against him and the Competent Authority, after giving a reasonable opportunity of show cause notice, passed an dated 19.4.83 dismissing the respondent from service. Thereupon the respondent workman invoked the jurisdiction of the Labour Court, Rajkot being Ref (LCR) No. 852 of 1984. In its Award the Labour Court recorded that it is true that the workman retained the said amount with him against Rules, but retention of that amount was not with dishonest intention or with an intention to misappropriate the same. Thus, the punishment of dismissal imposed by the petitioner Corporation to the workman for his mistake was found unreasonable and disproportionate and that was required to be modified. The Labour Court, by its Award dated 16.8.90 modified the punishment imposed by the Competent Authority and substituted the same with punishment of withholding of one increment and directed the petitioner Corporation to reinstate the respondent in service with full back wages.

3. Being aggrieved by the said Award dated 16.8.90 of the Labour Court, Rajkot, the petitioner Corporation has filed the present petition.

4. Heard the learned counsel for the parties and perused the relevant papers. The learned counsel Mr. Rawal for the petitioner Corporation submitted that an amount of Rs. 932.78 ps. was temporarily misappropriated by the petitioner in the year 1983 and therefore, punishment of withholding one increment is insufficient and inadequate looking to the seriousness of the offence committed by the respondent in which the respondent workman misappropriated the amount temporarily for a period of 21 days and if such a lighter punishment

is imposed, others too would follow the same and the petitioner Corporation will suffer irreparable loss and therefore, the punishment awarded by the Labour Court is not sufficient and is too inadequate in the facts and circumstances of the case. Hence, the learned counsel for the petitioner suggested that at least punishment of withholding five increments should have been imposed and the Award of the Labour Court be modified to that extent in view of the law laid down by the Hon'ble Supreme Court in the case of B.C.Chaturvedi vs. Union of India reported in AIR, 1996(SC), 484 wherein it is held that the Court is required to do actual justice to the parties even on the quantum of punishment awarded by the disciplinary authority or Tribunal.

5. The learned counsel for the respondent has supported the Award passed by the Labour Court, Rajkot. In order to avoid further litigations, he accepted the arguments of learned counsel for the petitioner to some extent and submitted that the penalty of withholding three increments may be imposed in place of withholding one increment. He has also submitted that 50% of the back wages was deposited by the petitioner Corporation and now the remaining amount of 50% back wages is required to be paid to the respondent.

6. In view of the statement made by the learned counsel for the respondent to which the learned counsel for the petitioner also agreed, I think it would be just and proper to impose penalty of withholding of three increments without future effect on the respondent workman which would meet ends of justice in the facts and circumstances of the present case.

7. Accordingly, this petition is partly allowed. The Award dated 16.8.90. passed by the Labour Court, Rajkot is confirmed qua reinstatement of the respondent workman with full back wages. However, the Award is modified to the extent that the punishment of withholding of one increment imposed by the Labour Court, Rajkot is substituted with punishment of withholding of three increments without future effect. The petitioner Corporation is directed to pay to the respondent workman the remaining amount of 50% back wages as expeditiously as possible and not later than three months from the date of this judgment. Rule is made absolute to the aforesaid extent only with no order as to costs. Interim relief, if any, stands vacated.

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